menial, non-sensitive position. That Respondent knew of minor law infractions committed by Rufus Smith but hired and retained him for many reasons other than political, and did discharge him when alleged bribery attempts, attributed to Rufus Smith, came to Respondent's attention. That such action violated no Canon of Judicial Ethics.

11. Respondent admits that:

A. He did for a limited period place his afflicted son in a Court position, counting, sorting and reconciling Bureau of Support accounts and checks, after Respondent was medically advised to activate, assist and closely supervise his said afflicted son.

B. He did during a summer vacation, when regular Court employees were vacationing, press into Court service his daughter, for the continuing and successful operation of Respondent's Court.

C. That none of said acts and actions violated any Canon of Judicial Ethics.

George S. Heitzler, Judge,
Court of Common Pleas
Division of Domestic Relations
Hamilton County, Ohio
Respondent

Bernard J. Gilday, Jr.
1500 American Building
Cincinnati, Ohio 45202
Counsel for Respondent

CERTIFICATE

Bernard J. Gilday, Jr., Counsel for Respondent, certifies that he did on the 9th day of September, 1971, forward to R. O. Klausmeyer, John J. Getgey and C. Donald Heile, authorized to represent Relator, The Cincinnati Bar Association, copy of said Answer by certified mail.

Bernard J. Gilday, Jr.
Counsel for Respondent

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
Court and Main Streets
Cincinnati, Ohio 45202
Respondent

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202
Relator

Filed
Oct. 4, 1971
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff
Sec'y.
No. 168

SUPPLEMENTAL COMPLAINT

Subsequent to filing the complaint herein, the respondent engaged in the following additional acts of professional misconduct:

1. On August 16, 1971, respondent, through his attorney, Bernard J. Gilday, Jr., pursuant to an agreement with officers of the Cincinnati Bar Association, visited one of relator's attorneys, John J. Getgey, and, during the course of the conversation, attempted to cause relator to influence the Commissioners by suggesting to the Commissioners that this matter should proceed under Rule XVIII rather than Rule XXI. The respondent, through his counsel, threatened that if the matter proceeded under Rule XXI rather than under Rule XVIII, respondent would request a public hearing and "many things" would undoubtedly come to light that would involve the son of a member of the Grievance Committee and the son of an officer of the Cincinnati Bar Association.

2. Thereafter, on or about August 18, 1971, respondent, through his attorney, Bernard J. Gilday, Jr., in a telephone conversation with the aforementioned member of the Grievance Committee, further stated that the respondent had many friends on the

police force, intimating that the police, through respondent, would press other charges against the son of the above mentioned member of the Grievance Committee and that the "record" of the boy could be secured through police and court house contacts, all of which would embarrass many people.

THE CINCINNATI
BAR ASSOCIATION

By R. O. Klausmeyer
2900 DuBois Tower
Cincinnati, Ohio 45202

By John J. Getgey
615 Provident Tower
Cincinnati, Ohio 45202

By C. Donald Heile
3005 Carew Tower
Cincinnati, Ohio 45202

CERTIFICATE

The undersigned, C. R. Beirne, President of the Cincinnati Bar Association, hereby certifies that R. O. Klausmeyer, John J. Getgey and C. Donald Heile, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the Supplemental Complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such Supplemental Complaint, as well as the original Complaint.

Dated ----------, 1971

C. R. Beirne, President
CINCINNATI BAR ASSOCIATION

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
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Respondent

No. 168

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202
Relator

ANSWER TO SUPPLEMENTAL COMPLAINT

1. Respondent admits that through his counsel by invitation, he did confer with John J. Getgey on August 16, 1971, and during the course of said conversation through counsel, did suggest that all interests were best served in the disposition of this cause if proceedings were governed by Rule XVIII. Respondent specifically denies that any threat or suggestion thereof was made regardless of how said proceedings were conducted.

2. Respondent specifically denies that through counsel or otherwise, at any time, was any intimation, insinuation or suggestion ever intended or in fact made

concerning the institution or processing of any criminal charge against any person whomsoever.

Bernard J. Gilday, Jr.
1500 American Building
Cincinnati, Ohio 45202
Counsel for Respondent

CERTIFICATE

Bernard J. Gilday, Jr., Counsel for Respondent, certifies that he did on the 27th day of October, 1971, forward to R. O. Klausmeyer, John J. Getgey and C. Donald Heile, authorized to represent Relator, The Cincinnati Bar Association, copy of said Answer to Supplemental Complaint by certified mail.

Bernard J. Gilday, Jr.
Counsel for Respondent

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF THE STATE OF OHIO

IN RE:

Complaint against

GEORGE S. HEITZLER, JR.
Judge, Court of Common Pleas
(Division of Domestic Relations)
Hamilton County Court House
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Cincinnati, Ohio 45202

Respondent

CINCINNATI BAR ASSOCIATION
125 East Ninth Street
Cincinnati, Ohio 45202

Relator

Filed
Aug. 4, 1972
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff,
Sec'y.
No. 168

FINDINGS OF FACT AND RECOMMENDATION OF HEARING PANEL

This matter comes before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio upon the Complaint and Certificate of the Cincinnati Bar Association alleging various vio-

lations by Respondent of the Canons of Judicial Ethics numbered 1, 4, 12, 13, 25, 26, 29, 33 and 34 (Canon 29 was added without objection at the Hearing) and further upon the Supplemental Complaint and Certificate of the Cincinnati Bar Association alleging "additional acts of professional misconduct" but citing no specific canons.

The Respondent filed timely Answers both to the original Complaint and to the Supplemental Complaint denying that Respondent had violated the referenced Canons of Judicial Ethics or that Respondent had engaged in the "acts of professional misconduct" alleged in the Supplemental Complaint.

Both matters came on to be heard commencing on December 16, 1971, before a duly appointed Hearing Panel of the Board of Commissioners. The hearings, which consumed a total of six days, were finally concluded on Friday, January 7, 1972; during the hearings, the Panel heard by testimony or stipulation more than fifty witnesses and received forty-seven documents into evidence.

The hearings were the subject of extraordinary public interest. At the request of Respondent, the location of the hearings was changed from Cincinnati, Ohio, where the Respondent is an active Judge of the Division of Domestic Relations of the Common Pleas Court, to Dayton, Ohio. Representatives of the Cincinnati news media, however, followed the hearings to Dayton and were regularly present at the Montgomery County Court House during the days of the hearings. To protect the secrecy and integrity of the hearings the Panel adopted rather strict security

measures which included banning reporters from the area of the hearings and admonishing orally and in writing all witnesses who testified to refrain from discussing the hearings or their testimony until the matter was fully adjudicated by final action of the Supreme Court of Ohio. The security measures were adopted by the Panel at the request, and with the prior concurrence, of Respondent and all counsel.

It is appropriate to note at this point that the Panel sought and received the full cooperation of all counsel and the Respondent during the long and sometimes trying days of hearings. The Panel recognizes that it was a particular hardship on all counsel to prepare and present their cases more than 50 miles from their home base; the scheduling of witnesses was made much more difficult, for example, because of this distance, since most of the witnesses had their residences in the Cincinnati area. The Panel, therefore, would like to express its appreciation to all counsel for their help and cooperation during the hearings and to the witnesses for their sacrifices in traveling to the place of hearing and their patience in awaiting their turn to testify. Without such cooperation, the hearings could easily have lasted many more days.

As indicated above, the hearings concluded on Friday, January 7, 1972, and the matters were duly submitted to the Panel on the testimony, stipulations and exhibits. While all evidence with respect to both Complaints was presented, the Panel reserved ruling on a motion by Respondent to dismiss the Supplemental Complaint. The ruling on the motion will be disposed of herein. Both parties were also granted the opportunity to submit briefs (1) on the motion to dismiss

the Supplemental Complaint, (2) on the merits of the Complaints, and, (3) on the appropriate remedy should violations be found.

INTRODUCTION

Because of the length and complexity of the matters involved herein, the Panel believes an introductory summary will be helpful in understanding the formal Findings of Fact and Recommendations.

The Respondent is a Judge in the Domestic Relations Division of the Common Pleas Court of Hamilton County, Ohio, and was previously a Judge of the Municipal Court of Cincinnati, Ohio.

The original Complaint was submitted in the alternative under Rule XVIII and Rule XXI of the Rules of the Supreme Court of Ohio. The Supplemental Complaint did not specify under which Rule it was submitted. Both matters were heard as a Complaint and Supplemental Complaint under Rule XVIII. No objections were made by counsel or Respondent to the matters being so heard.

The original Complaint, which is based entirely on alleged violations of the Canons of Judicial Ethics, divides into three specific areas of alleged misconduct:

(A) The personal, social conduct of the Respondent;

(B) Respondent's activities relating to his judicial position; and,

(C) Respondent's financial investment in Harmony Loan Company, a Kentucky Corporation.

The personal, social conduct[1] of Respondent, which is the subject of Complaint, includes[2]: (1) The appearance of public cohabitation with Respondent's second and present wife, at a time when Respondent was still married to his first wife; (2) Public, offensive, personal conduct during an Ohio State Bar Association sponsored trip to Majorca, Spain, in 1969; (4) Public intoxication; and (5) Public immoral conduct at a downtown Cincinnati hotel. All of the acts complained of occurred while Respondent was on the Common Pleas Bench.

The Respondent's activities relating to his judicial position, which are the subject of complaint, include: (8) the knowing maintenance of a relationship with a Kentucky loan company which allowed the loan company improperly to exploit its relationship with a member of the judiciary; (10) the employment, on Respondent's judicial staff, of a person known to Respondent to have had a criminal record; and (11) the employment, on Respondent's judicial staff, of his son and daughter. Such acts took place while Respondent was a Judge of the Common Pleas Court. In addition, while on the Municipal Court, it is alleged (9) Respondent transacted judicial business involving Harmony Loan Company while having a variety of personal interests in that company. As to this allega-

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[1]The Panel dismissed for lack of evidence two additional charges (Paragraph 3 and 6) involving personal, social misconduct.

[2]The numbers used will correspond to the paragraphs in the Complaint.

tion, Respondent has asserted that such allegations cannot be considered "for the reason that such acts, if any, did not occur within Respondent's current term of office."

Finally, Respondent is alleged in the original Complaint (7) to have had personal financial investments in Harmony Loan Company in direct circumvention of Kentucky Laws. The Panel has reviewed the evidence as to this allegation and has unanimously concluded that there is a lack of sufficient evidence of a violation. The Panel, on its own motion, therefore, now dismisses this charge, Paragraph 7 of the original Complaint.

The Supplemental Complaint, which alleges "acts of professional misconduct," is based upon alleged acts of Respondent and his counsel, subsequent to the filing of the original Complaint, in attempting, by threats, to influence the procedural course of the original Complaint; i.e. allegedly to insure that the original Complaint be heard pursuant to Rule XVIII rather than Rule XXI.

For the purposes of the Panel Report, therefore, there remain four separate and distinct areas to be considered:

(A) The remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the original Complaint);

(B) The allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint);

(C) The allegations with respect to activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint); and

(D) The motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint.

The four areas will be considered, at first, separately both with respect to "Findings of Fact" and "Recommendations" and will also be considered collectively in a "Final Recommendation."

Discussion of the Evidence and Findings of Fact

As to the remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the Original Complaint)

The parties have stipulated that during the time periods in which the acts, alleged as a basis for Paragraphs 1, 2, 4 and 5 of the Complaint, took place, Respondent duly held the office of Judge of the Common Pleas Court of Hamilton County, Ohio, Domestic Relations Division.

The allegations contained in Paragraphs 1 and 2 of the Complaint took place within the period of time extending from the latter part of 1969 until September, 1970.

During this period Respondent was married to his first wife, though living apart from her. In January, 1970, Respondent and his first wife entered into a Sep-

aration Agreement (Exhibit 48). A decree of divorce dated October 13, 1970, terminated Respondent's marriage to his first wife. (Exhibit 49).

During this same period, Respondent maintained a close relationship with Miss Carol Chasteen.

Respondent characterized the relationship in terms of his being "romantically inclined" and "very close to in love." Subsequent to his divorce, Respondent, in fact, took Miss Chasteen as his second wife. To distinguish Respondent's two wives, however, we shall refer to Respondent's second wife as Miss Chasteen throughout this opinion.

Paragraph 1 of the Complaint alleges that the "conduct of both Carol Chasteen and [Respondent] was such as to cause members of the apartment complex [where Respondent resided apart from his first wife] and others to believe they were living together."

The Panel finds from the evidence submitted that Miss Chasteen was present in Respondent's apartment upon so many occasions, at such times and in such dress as to create the public appearance of residing therein, at least during a part of the period from latter 1969 until September, 1970.

An example of Miss Chasteen's intimate behavior during this period was Mr. Grecco's testimony that he witnessed Miss Chasteen shaking out rugs in her robe in the early morning.

Respondent offered, by way of explanation, testimony that Miss Chasteen was in Respondent's apart-

ment to care for Respondent's partially invalided son,[3] and that such care required her presence both in the early morning and late evening. Respondent's son, who was partially invalided following serious surgery, lived with Respondent. The Panel has no doubt that both Respondent and Miss Chasteen gave excellent and continuous care to Respondent's son; the son's doctor so testified and the Panel was impressed by the devotion of both Respondent and Miss Chasteen as disclosed by the evidence.

Nevertheless, Respondent's testimony merely confirms the testimony of the other witnesses; that the personal behavior of Respondent, in relation to Miss Chasteen's presence in Respondent's apartment, gave the appearance of cohabitation and, therefore, impropriety.

Miss Chasteen, though present outside the hearing room, did not testify.

Paragraph 2 of the Complaint alleges that during an Ohio State Bar Association sponsored trip to Majorca from October 24, 1969, until November 3, 1969, on which Respondent was accompanied by Miss Chasteen, Respondent's "conduct was offensive to other members of the Ohio State Bar Association and their wives."

The Panel finds that there was credible evidence both that Respondent and Miss Chasteen comported themselves in an amorous manner (including, for example, an affectionate pat by Respondent of Miss

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[3]While Respondent characterized Miss Chasteen's care in terms equivalent to the care that would be rendered by a practical nurse, the evidence discloses that Miss Chasteen was not compensated for the services which she rendered.

Chasteen's allegedly bare posterior at the Columbus airport) and also that Respondent consumed intoxicating beverages while in Majorca with the usual attendant results of loudness and uninhabited actions.

The evidence, however, was equally balanced as to whether Respondent's conduct was excessive for such an outing or essentially different from that of the ordinary person, including members of the judiciary, under similar circumstances.

The Panel finds, therefore, as a matter of fact that the evidence does not support a finding against Respondent under Paragraph 2 of the Complaint.

Paragraph 4 of the Complaint alleges that Respondent at a downtown Cincinnati hotel "was observed in a state of intoxication at the hours of 3:00 and 4:00 in the morning and conducted himself in a loud and offensive manner . . ."

The evidence offered by Relator fell far short of sustaining the allegations of Paragraph 4. The only credible evidence came from one witness whom the Panel considered to be relating his honest opinion but whom the Panel also considered to be overzealous in his characterization of Respondent's behavior.

Many other witnesses testified in Respondent's behalf, indicating that their observations of Respondent at similar times and under similar circumstances did not bear out a complaint of improper conduct.

The Panel concludes as a matter of fact that the evidence does not sustain the allegations of Paragraph 4 of the original Complaint.

Paragraph 5 of the original Complaint alleges that Respondent engaged in "immoral acts" in suites or rooms of the same downtown Cincinnati hotel.

The most unfavorable conclusion to Respondent to be reached from the evidence under this charge is that on one occasion in an upstairs suite in the semi-privacy of a small group of two or perhaps three other persons, Respondent was indiscrete concerning his attire and language. Such an isolated and essentially private occurrence did not, in the Panel's opinion, amount to a violation of the Canons of Judicial Ethics.

The Panel finds, as a matter of fact, that the evidence does not sustain an allegation of impropriety under Paragraph 5.

In summary, with respect to the allegations and charges of the original Complaint concerning Respondent's personal, social conduct, the Panel finds that the evidence sustains only the allegations set forth in Paragraph 1; that the evidence presented under Paragraph 1 does prove a violation as charged of Paragraph 4 of the Canons of Judicial Ethics in that Respondent's personal behavior in his everyday life, while a Judge, gave the appearance of impropriety and was not beyond reproach; that the charges set forth in Paragraphs 2, 4 and 5 should be dismissed; and, that the charge set forth in Paragraph 3 was earlier dismissed by the Panel for lack of evidence at the close of Relator's case. The Panel makes no findings with respect to whether the evidence under Paragraph 1 sustains the charges that the conduct of Respondent also vio-

lated Canons 1 and 34, since the primary thrust of the evidence related to Canon 4.

As to the allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint)

Again, by stipulation, the parties have agreed that at all times material to Paragraphs 8, 10 and 11 of the original Complaint, Respondent held the office of Common Pleas Judge of Hamilton County, Ohio, Division of Domestic Relations.

Paragraph 8 alleges that Respondent knowingly and improperly associated "with Harmony Loan Company and its officers and directors and . . . [permitted] the publicity of his name as a Judge in connection with the business of Harmony Loan Company . . ."

Respondent's Answer admits the factual allegations of Paragraph 8 but denies such allegations constitute a violation of the Canons of Judicial Ethics.

Harmony Loan Company is a Kentucky Corporation, engaged in the small loan business.

Respondent served as a director of Harmony while a Judge for an extended period of time. However, during such time, Respondent did not participate in management and only infrequently attended directors' meetings.

Although not active in the business of Harmony, Respondent decidedly helped, by serving as a director, to promote the business interests of Harmony.

Frank Spampinato, who actually ran Harmony, testified that it was "Nice to have a distinguished Board." Implicit in such testimony is the conclusion that the presence of Respondent as a director coupled with the prestige of Respondent as a Judge enhanced the status of Harmony and promoted Harmony's business. This conclusion was corroborated by the testimony of witnesses Cornell and Weikel.

Further, Respondent permitted his name to be used in a Prospectus (Exhibit 4) used in connection with the sale of debentures of Harmony and had also permitted his picture, name and biography to be used in Harmony promotional literature (Exhibit 7).

Since Respondent was not an active, managing director, the Panel can only conclude, as a matter of fact, that Respondent knowingly remained on the Harmony Board for the purpose of allowing his prestige to bolster Harmony's stature and thereby increase its business.

The motivation for continuing such an association may well have been the fact, disclosed by the evidence, that Respondent had invested money in Harmony; whatever the motivation, however, the Panel concludes that Respondent used the power of his office and the influence of his name to promote the business of Harmony.

Included within the evidence submitted under Paragraph 8 was evidence given by witness Gerald White that an attorney co-director of Respondent on the Harmony Board of Directors received favored treatment by Respondent in Respondent's court. Witness White's

testimony was based on a random, extensive comparative analysis of the outcome of cases handled by the said attorney and by other attorneys. Added to such evidence was the fact that Respondent was a frequent luncheon companion of the said attorney.

There was testimony by a respected attorney who had practiced 30 years in Domestic Relations Court that he had observed no favoritism in Respondent's court and that he was in Respondent's court frequently enough to have observed such favoritism had it existed.

The Panel concludes, however, from all of the evidence, that Respondent was not indifferent to private, partisan influences and that his conduct justified the impression that there was one, who practiced before Respondent, who could unduly enjoy Respondent's favor.

Paragraph 10 and 11 of the original Complaint have to do with Respondent's hiring practices. It is admitted that Respondent employed, as a constable, one Rufus "Snowshoe" Smith, who had had a lengthy criminal record. Respondent subsequently discharged Smith.

The Panel finds that Respondent knew or should have known of "Snowshoe" Smith's criminal record. The criminal record, as introduced through witness Spencer, speaks for itself; suffice it to say that the record is bad in precisely those areas which would make an employee undesirable in the field of domestic relations.

"Snowshoe" Smith was called as a witness, but did not testify, claiming, and being granted by the Panel,

the protection afforded by the Fifth Amendment to the U. S. Constitution.

The evidence demonstrated to the satisfaction of the Panel that "Snowshoe" Smith was not possessed of the strictest probity; in no way can it be said that "Snowshoe" Smith was selected by Respondent with a view solely to his character and fitness.

Respondent attempted to justify "Snowshoe" Smith's appointment on the grounds of rehabilitation and the fact that he was merely a "go for". The very same concern for rehabilitation, if we accept Respondent's testimony corroborates Respondent's knowledge of "Snowshoe" Smith's record and should have put Respondent on notice that rehabilitation should have been attempted somewhere other than in Domestic Relations Court.

A "go for" as "Snowshoe" Smith was called is one who fetches the parties and their attorneys when it is time for their appearance.

The testimony in this matter points up convincingly the reason for Canon 12.

Reuben Richardson, M. D., a black doctor of medicine, testified that "Snowshoe" Smith solicited, and he, Dr. Richardson, gave to Smith, the sum of $1,000.00 to make things come out right in Richardson's divorce action.

There is no evidence that Respondent knew of this exchange of money; but, the evidence is clear that by the hiring of Smith, Respondent invited just such an occurrence.

Dr. Richardson's cynical words, "Way things were going, I had no other alternative" crys out more eloquently than the best of prose, for the careful selection of all judicially associated personnel lest the public entirely lose faith in the judicial system.

In addition to employing Smith, Respondent also employed from time to time his son and daughter. His son, who was partially invalided, was employed at the son's doctor's suggestion for therapeutic reasons; his daughter was employed primarily as summer relief help. While the Panel concludes that such employment may technically amount to nepotism, the Panel believes that such employment did not amount to an intentional exploitation of nepotism.

Summarizing, therefore, the Panel's findings with respect to activities of Respondent while on the Common Pleas Bench, the Panel finds: that Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; that Respondent violated Canon 13 by suffering his conduct to justify the impression that his favor was unduly enjoyed by another; that Respondent violated Canon 34 in that he was not indifferent to partisan influences; and, that Respondent violated Canon 12 by employing one whom he knew, or should have known, was not possessed of the required character and fitness.

As to the allegations with respect to activities while on the Municipal Court Bench (Paragraph 9)

The evidence is uncontradicted that during his term as a Municipal Judge and while also a member of the

Board of Directors of Harmony Loan Company, Respondent signed numerous judicial Orders involving Harmony Loan Company.

The evidence is conflicting, and, therefore, not probative, as to whether any of Respondent's actions involved contested matters.

The Panel, therefore, for the purposes herein finds only that Respondent signed numerous Orders (over 350 according to one witness) in cases in which Harmony was a party but finds also that there is no convincing evidence that Respondent rendered decisions in contested matters in which Harmony was a party.

Respondent asserts two defenses: that the allegations cannot be herein considered for the reason that such acts, if any, did not occur within Respondent's current term of office; and that the signing of the Orders was purely administrative and not judicial and, therefore, not violative of the Canons of Judicial Ethics.

The Panel disagrees with the latter defense. The signing of Orders imports the full weight of the judicial office to the Order. It is a judicial not administrative function. To the public, the distinction between contested and non-contested matters is a distinction without a difference; to the public, Respondent acted in violation of the spirit of the Canons of Judicial Ethics and with indifference to the ethical standards which "the people have a right to expect from" a Judge.

With respect to the defense that the acts, if any, did not occur within Respondent's current term, the Panel

finds as a factual matter that the acts did not occur within Respondent's current term. However, the Panel further concludes that the fact that the acts did not occur within Respondent's current term does not bar this charge. Respondent is not herein charged as a Judge under Rule XXI but rather as an attorney under Rule XVIII. Any limitation must, therefore, be that applied to attorneys for violations of the Canons of Ethics. Clearly the charge is timely as applied to an attorney and no claim is made by Respondent that it is not. The fact that the violations complained of happen to be violations of the Canons of Judicial Ethics—the observance of which is also imposed on attorneys when serving as Judges—does not shorten the limitation time or otherwise moderate or alter the defenses afforded attorneys under Rule XVIII.

The Panel, therefore, finds that Respondent signed numerous Judicial Orders, during his term as Municipal Judge, which involved cases in which a company, of which he was contemporaneously a director, was a party; that such acts constituted violations of Canons 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics; and, that the consideration of such acts is properly before this Panel.

The Motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint

The Motion to Dismiss the Supplemental Complaint raises two questions: whether the charge of "additional acts of professional misconduct" without reference to specific Canons is sufficiently explicit to apprise Re-

spondent of the charges and whether the evidentiary facts demonstrate a sufficient basis for a charge under any of the Canons.

The Panel has had to keep in mind the fact that Respondent, while both a Judge and a lawyer, at the time of the incidents involved, was also the client and was not an active participant in the colloquies that gave rise to the Supplemental Complaint.

The Supplemental Complaint is based entirely upon conversations which took place between Respondent's counsel and others. Respondent did not participate in these conversations.

The charge, which the Panel views as extremely serious, is that Respondent caused his counsel to make threats to members of the Cincinnati Bar Association allegedly for the purpose of causing this matter to be heard under Rule XVIII rather than Rule XXI.

Witness Wirthlan, in the view of the Panel, did, in fact, justifiably believe that a threat had been made against him, and his family, by Respondent's counsel and is to be commended for rejecting what he viewed to be a threat and bringing the matter before this Committee. The testimony concerning the conversation between Mr. Wirthlan and Respondent's counsel supports the conclusion that language was employed by Respondent's counsel which was reprehensible.

However, Respondent enters this conversation and the conversation alleged in the first paragraph of the Supplemental Complaint only by inference.

The Panel concludes, therefore, that the evidence fails to establish that Respondent directed the actions of his counsel which led to the filing of the Supplemental Complaint.

The Supplemental Complaint must, therefore, be dismissed. Since the Supplemental Complaint must be dismissed, we need not reach the question of the import of the words "further acts of misconduct".

RECOMMENDATIONS

As to the allegations with respect to personal, social conduct (Paragraph 1 of the original Complaint)

The Panel has found that the conduct of Respondent in relation to Miss Chasteen's presence in Respondent's apartment gave the appearance of cohabitation and, therefore, impropriety in violation of Canon 4 of the Canons of Judicial Ethics. In mitigation, the Panel has had to consider the fact that Respondent was separated from his first wife, that during most of the period, in fact, Respondent and his first wife had executed a separation agreement and that Respondent subsequently married Miss Chasteen. The Panel, therefore, recommends a private reprimand for this violation, taken alone.

As to the allegations with respect to Respondent's activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint)

The Panel has found that Respondent in his relationship with Harmony Loan Company and with one of

his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34, and in hiring "Snowshoe" Smith has violated Canon 12 of the Canons of Judicial Ethics.

The Panel can find no mitigating circumstances.

There were no compelling reasons for the maintenance of the Harmony relationships nor for the hiring of Smith. Indeed, there were compelling reasons which would have been evident even to the inexperienced and unsophisticated to have refrained from all three relationships.

The conduct of Respondent in establishing and continuing these relationships cannot help but have brought his court into disrepute. One Panel Member has written: "I feel that the Hamilton County Domestic Relations Court, its personnel, practice and procedures fall far below acceptable standards when we consider the same from an ethical point of view or from a public relations standpoint."

For these violations considered together, the Panel, therefore, recommends indefinite suspension.

As to allegations with respect to Respondent's activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint)

The Panel has found that Respondent has violated Canons 4, 13, 25, 26, 29 and 34 of the Canons of Judicial Ethics by signing Orders in cases in which Harmony Loan Company, of which he was contem-

poraneously a director, was a party, albeit non-contested cases.

Again, there are no mitigating circumstances.

The actions of Respondent under this charge are again precisely the type that brings the legal system into disrepute.

However, the Panel has had to consider that the actions herein complained of are in the past and that there is no evidence of "harm done" to any litigants (of the testimony by the medical doctor under Paragraph 10 of the original Complaint).

The Panel recommends Public Reprimand for the violations alleged under this charge.

FINAL RECOMMENDATION

Viewing the charges cumulatively rather than individually, the Panel concludes that Respondent over an extended period of time has displayed continuing indifference to the Canons of Judicial Ethics, "as a proper guide and reminder for judges." The Panel, therefore, recommends that Respondent be indefinitely suspended from the practice of law.

All of the foregoing recommendations are made pursuant to the provisions of Rule XVIII of the Rules of the Supreme Court of Ohio.

Respectfully submitted,

Roger H. Smith, Chairman
Erle Bridgewater
John O. Henry

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:

Complaint against:

GEORGE S. HEITZLER, JR.
Respondent,

CINCINNATI BAR ASSOCIATION,
Relator.

Filed
Sept. 1, 1972
Board of Commissioners
on Grievances and
Discipline
William D. Radcliff,
Sec'y.
Case No. 168

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

This matter comes before the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio upon the Complaint and Certificate of the Cincinnati Bar Association alleging various violations by Respondent of the Canons of Judicial Ethics numbered 1, 4, 12, 13, 25, 26, 29, 33 and 34 (Canon 29 was added without objection at the hearing) and

further upon the Supplemental Complaint and Certificate of the Cincinnati Bar Association alleging "additional acts of professional misconduct" but citing no specific canons.

The Respondent filed timely Answers both to the original Complaint and to the Supplemental Complaint denying that Respondent had violated the referenced Canons of Judicial Ethics or that Respondent had engaged in the "acts of professional misconduct" alleged in the Supplemental Complaint.

Both matters came on to be heard commencing on December 16, 1971, before a duly appointed Hearing Panel of the Board of Commissioners. The hearings, which consumed a total of six days, were finally concluded on Friday, January 7, 1972; during the hearings the Panel heard by testimony or stipulation more than fifty witnesses and received forty-seven documents into evidence.

The hearings were the subject of extraordinary public interest. At the request of Respondent, the location of the hearings was changed from Cincinnati, Ohio, where the Respondent is an active Judge of the Division of Domestic Relations of the Common Pleas Court, to Dayton, Ohio. Representatives of the Cincinnati news media, however, followed the hearings to Dayton and were regularly present at the Montgomery County Court House during the days of the hearings. To protect the secrecy and integrity of the hearings the Panel adopted rather strict security measures which included banning reporters from the area of the hearings and admonishing orally and in writing all witnesses who testified to refrain from

discussing the hearings or their testimony until the matter was fully adjudicated by final action of the Supreme Court of Ohio. The security measures were adopted by the Panel at the request, and with the prior concurrence, of Respondent and all counsel.

It is appropriate to note at this point that the Panel sought and received the full cooperation of all counsel and the Respondent during the long and sometimes trying days of hearings. The Panel recognized that it was a particular hardship on all counsel to prepare and present their cases more than 50 miles from their home base; the scheduling of witnesses was made much more difficult, for example, because of this distance, since most of the witnesses had their residences in the Cincinnati area. The Panel, therefore, would like to express its appreciation to all counsel for their help and cooperation during the hearings and to the witnesses for their sacrifices in traveling to the place of hearing and their patience in awaiting their turn to testify. Without such cooperation, the hearings could easily have lasted many more days.

As indicated above, the hearings concluded on Friday, January 7, 1972, and the matters were duly submitted to the Panel on the testimony, stipulations and exhibits. While all evidence with respect to both Complaints was presented, the Panel reserved ruling on a motion by Respondent to dismiss the Supplemental Complaint. The ruling on the motion will be disposed of herein. Both parties were also granted the opportunity to submit briefs (1) on the motion to dismiss the Supplemental Complaint, (2) on the merits of the Complaints, and, (3) on the appropriate remedy should violations be found.

INTRODUCTION

Because of the length and complexity of the matters involved herein, the Board believes an introductory summary will be helpful in understanding the formal Findings of Fact and Recommendations.

The Respondent is a Judge in the Domestic Relations Division of the Common Pleas Court of Hamilton County, Ohio, and was previously a Judge of the Municipal Court of Cincinnati, Ohio.

The original Complaint was submitted in the alternative under Rule XVIII and Rule XXI of the Rules of the Supreme Court of Ohio. The Supplemental Complaint did not specify under which Rule it was submitted. Both matters were heard as a Complaint and Supplemental Complaint under Rule XVIII. No objections were made by counsel or Respondent to the matters being so heard.

The original Complaint, which is based entirely on alleged violations of the Canons of Judicial Ethics, divides into three specific areas of alleged misconduct:

(A) The personal, social conduct of the Respondent:

(B) Respondent's activities relating to his judicial position; and,

(C) Respondent's financial investment in Harmony Loan Company, a Kentucky Corporation.

The personal, social conduct of Respondent, which is the subject of the Complaint, includes: (1) The ap-

pearance of public cohabitation with Respondent's second and present wife, at a time when Respondent was still married to his first wife; (2) public, offensive, personal conduct during an Ohio State Bar Association sponsored trip to Majorca, Spain, in 1969; (4) public intoxication; and (5) public immoral conduct at a downtown Cincinnati hotel. (The above numbers correspond to the paragraphs in the Complaint.) All of the acts complained of occurred while Respondent was on the Common Pleas Bench.

The Respondent's activities relating to his judicial position, which are the subject of the Complaint, include: (8) the knowing maintenance of a relationship with a Kentucky loan company which allowed the loan company improperly to exploit its relationship with a member of the judiciary; (10) the employment, on Respondent's judicial staff, of a person known to Respondent to have had a criminal record; and (11) the employment, on Respondent's judicial staff, of his son and daughter. Such acts took place while Respondent was a Judge of the Common Pleas Court. In addition, while on the Municipal Court, it is alleged (9) Respondent transacted judicial business involving Harmony Loan Company while having a variety of personal interests in that company. As to this allegation, Respondent has asserted that such allegations cannot be considered "for the reason that such acts, if any, did not occur within Respondent's current term of office."

Finally, Respnodent is alleged in the original Complaint (7) to have had personal financial investments in Harmony Loan Company in direct circumvention of Kentucky laws. The Panel reviewed the evidence as to this allegation and unanimously concluded that

there was a lack of sufficient evidence of a violation. The Panel, on its own motion, therefore, dismissed this charge, Paragraph 7 of the original Complaint.

The Supplemental Complaint, which alleges "acts of professional misconduct," is based upon alleged acts of Respondent and his counsel, subsequent to the filing of the original Complaint, in attempting, by threats, to influence the procedural course of the original Complaint; i.e., allegedly to insure that the original Complaint be heard pursuant to Rule XVIII rather than Rule XXI.

For the purposes of this Board Report, therefore, there remain four separate and distinct areas to be considered:

(A) The remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the original Complaint);

(B) The allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10, and 11 of the original Complaint);

(C) The allegations with respect to activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint); and

(D) The motion to dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint.

The four areas will be considered, at first, separately both with respect to "Findings of Fact" and "Recommendations" and will also be considered collectively in a "Final Recommendation."

Discussion of the Evidence and Findings of Fact

As to the remaining allegations with respect to personal, social conduct (Paragraphs 1, 2, 4 and 5 of the Original Complaint)

The parties have stipulated that during the time periods in which the acts, alleged as a basis for Paragraphs 1, 2, 4 and 5 of the Complaint, took place, Respondent duly held the office of Judge of the Common Pleas Court of Hamilton County, Ohio, Domestic Relations Division.

The allegations contained in Paragraphs 1 and 2 of the Complaint took place within the period of time extending from the latter part of 1969 until September, 1970.

During this period Respondent was married to his first wife, though living apart from her. In January, 1970, Respondent and his first wife entered into a Separation Agreement (Exhibit 48). A decree of divorce dated October 13, 1970, terminated Respondent's marriage to his first wife (Exhibit 49).

During this same period, Respondent maintained a close relationship with Miss Carol Chasteen.

Respondent characterized the relationship in terms of his being "romantically inclined" and "very close to in love." Subsequent to his divorce, Respondent, in fact, took Miss Chasteen as his second wife. To distinguish Respondent's two wives, however, we shall refer to Respondent's second wife as Miss Chasteen throughout this opinion.

Paragraph 1 of the Complaint alleges that the "conduct of both Carol Chasteen and [Respondent] was such as to cause members of the apartment complex [where Respondent resided apart from his first wife] and others to believe they were living together."

The Board finds from the evidence submitted that Miss Chasteen was present in Respondent's apartment upon so many occasions, at such times and in such dress as to create the public appearance of residing therein, at least during a part of the period from latter 1969 until September, 1970.

An example of Miss Chasteen's intimate behavior during this period was Mr. Grecco's testimony that he witnessed Miss Chasteen shaking out rugs in her robe in the early morning.

Respondent offered, by way of explanation, testimony that Miss Chasteen was in Respondent's apartment to care for Respondent's partially invalided son, and that such care required her presence both in the early morning and late evening. Respondent's son, who was partially invalided following serious surgery, lived with Respondent. (While Respondent characterized Miss Chasteen's care in terms equivalent to the care that would be rendered by a practical nurse, the evidence discloses that Miss Chasteen was not compensated for the services which she rendered.) The Panel had no doubt that both Respondent and Miss Chasteen gave excellent and continuous care to Respondent's son; the son's doctor so testified and the Panel was impressed by the devotion of both Respondent and Miss Chasteen as disclosed by the evidence.

Nevertheless, Respondent's testimony merely confirms the testimony of the other witnesses; that the personal behavior of Respondent, in relation to Miss Chasteen's presence in Respondent's apartment, gave the appearance of cohabitation and, therefore, impropriety.

Miss Chasteen, though present outside the hearing room, did not testify.

Paragraph 2 of the Complaint alleges that during an Ohio State Bar Association sponsored trip to Majorca from October 24, 1969, until November 3, 1969, on which Respondent was accompanied by Miss Chasteen, Respondent's "conduct was offensive to other members of the Ohio State Bar Association and their wives."

The Board finds that there was credible evidence both that Respondent and Miss Chasteen comported themselves in an amorous manner (including, for example, an affectionate pat by Respondent of Miss Chasteen's allegedly bare posterior at the Columbus airport) and also that Respondent consumed intoxicating beverages while in Majorca with the usual attendant results of loudness and uninhibited actions.

The evidence, however, was equally balanced as to whether Respondent's conduct was excessive for such an outing or essentially different from that of the ordinary person, including members of the judiciary, under similar circumstances.

The Board finds, therefore, as a matter of fact, that the evidence does not support a finding against Respondent under Paragraph 2 of the Complaint.

Paragraph 4 of the Complaint alleges that Respondent at a downtown Cincinnati hotel "was observed in a state of intoxication at the hours of 3:00 and 4:00 in the morning and conducted himself in a loud and offensive manner . . ."

The evidence offered by Relator fell far short of sustaining the allegations of Paragraph 4. The only credible evidence came from one witness whom the Panel considered to be relating his honest opinion but whom the Panel also considered to be overzealous in his characterization of Respondent's behavior.

Many other witnesses testified in Respondent's behalf, indicating that their observations of Respondent at similar times and under similar circumstances did not bear out a complaint of improper conduct.

The Board concludes as a matter of fact that the evidence does not sustain the allegations of Paragraph 4 of the original Complaint.

Paragraph 5 of the original Complaint alleges that Respondent engaged in "immoral acts" in suites or rooms of the same downtown Cincinnati hotel.

The most unfavorable conclusion to Respondent to be reached from the evidence under this charge is that on one occasion in an upstairs suite in the semi-privacy of a small group of two or perhaps three other persons, Respondent was indiscrete concerning his attire and language. Such an isolated and essentially private occurrence did not, in the Board's opinion, amount to a violation of the Canons of Judicial Ethics.

The Board finds, as a matter of fact, that the evidence does not sustain an allegation of impropriety under Paragraph 5.

In summary, with respect to the allegations and charges of the original Complaint concerning Respondent's personal, social conduct, the Board finds that the evidence sustains only the allegations set forth in Paragraph 1; that the evidence presented under Paragraph 1 does prove a violation as charged in Canon 4 of the Canons of Judicial Ethics in that Respondent's personal behavior in his everyday life, while a Judge, gave the appearance of impropriety and was not beyond reproach; that the charges set forth in Paragraphs 2, 4 and 5 should be dismissed; and, that the charge set forth in Paragraph 3 was dismissed by the Panel for lack of evidence at the close of Relator's case. The Board makes no findings with respect to whether the evidence under Paragraph 1 sustains the charges that the conduct of Respondent also violated Canons 1 and 34, since the primary thrust of the evidence related to Canon 4.

As to the allegations with respect to activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint)

Again, by stipulation, the parties agreed that at all times material to Paragraphs 8, 10 and 11 of the original Complaint, Respondent held the office of Common Pleas Judge of Hamilton County, Ohio, Division of Domestic Relations.

Paragraph 8 alleges that Respondent knowingly and improperly associated "with Harmony Loan Company

and its officers and directors and . . . [permitted] the publicity of his name as a Judge in connection with the business of Harmony Loan Company . . ."

Respondent's Answer admits the factual allegations of Paragraph 8 but denies such allegations constitute a violation of the Canons of Judicial Ethics.

Harmony Loan Company is a Kentucky Corporation, engaged in the small loan business.

Respondent served as a director of Harmony while a Judge for an extended period of time. However, during such time, Respondent did not participate in management and only infrequently attended directors' meetings.

Although not active in the business of Harmony, Respondent decidedly helped, by serving as a director, to promote the business interests of Harmony.

Frank Spampinato, who actually ran Harmony, testified that it was "Nice to have a distinguished Board." Implicit in such testimony is the conclusion that the presence of Respondent as a director coupled with the prestige of Respondent as a Judge enhanced the status of Harmony and promoted Harmony's business. This conclusion was corroborated by the testimony of witnesses Cornell and Weikel.

Further, Respondent permitted his name to be used in a Prospectus (Exhibit 4) used in connection with the sale of debentures of Harmony and had also permitted his picture, name and biography to be used in Harmony promotional literature (Exhibit 7).

Since Respondent was not an active, managing director, the Board can only conclude, as a matter of fact, that Respondent knowingly remained on the Harmony Board for the purpose of allowing his prestige to bolster Harmony's stature and thereby increase its business.

The motivation for continuing such an association may well have been the fact, disclosed by the evidence, that Respondent had invested money in Harmony; whatever the motivation, however, the Board concludes that Respondent used the power of his office and the influence of his name to promote the business of Harmony.

Included within the evidence submitted under Paragraph 8 was evidence given by witness Gerald White that an attorney co-director of Respondent on the Harmony Board of Directors received favored treatment by Respondent in Respondent's court. Witness White's testimony was based on a random, extensive comparative analysis of the outcome of cases handled by the said attorney and by other attorneys. Added to such evidence was the fact that Respondent was a frequent luncheon companion of the said attorney.

There was testimony by a respected attorney who had practiced 30 years in Domestic Relations Court that he had observed no favoritism in Respondent's court and that he was in Respondent's court frequently enough to have observed such favoritism had it existed.

The Board concludes, however, from all of the evidence, that Respondent was not indifferent to private, partisan influences and that his conduct justified the

impression that there was one, who practiced before Respondent, who could unduly enjoy Respondent's favor.

Paragraphs 10 and 11 of the original Complaint have to do with Respondent's hiring practices. It is admitted that Respondent employed, as a constable, one Rufus "Snowshoe" Smith, who had had a lengthy criminal record. Respondent subsequently discharged Smith.

The Board finds that Respondent knew or should have known of "Snowshoe" Smith's criminal record. The criminal record, as introduced through witness Spencer, speaks for itself; suffice it to say that the record is bad in precisely those areas which would make an employee undesirable in the field of domestic relations.

"Snowshoe" Smith was called as a witness, but did not testify, claiming, and being granted by the Panel, the protection afforded by the Fifth Amendment to the United States Constitution.

The evidence demonstrated to the satisfaction of the Panel that "Snowshoe" Smith was not possessed of the strictest probity; in no way can it be said that "Snowshoe" Smith was selected by Respondent with a view solely to his character and fitness.

Respondent attempted to justify "Snowshoe" Smith's appointment on the grounds of rehabilitation and the fact that he was merely a "go for". The very same concern for rehabilitation, if we accept Respondent's testimony corroborates Respondent's knowledge of

"Snowshoe" Smith's record and should have put Respondent on notice that rehabilitation should have been attempted somewhere other than in Domestic Relations Court.

A "go for" as "Snowshoe" Smith was called is one who fetches the parties and their attorneys when it is time for their appearance.

The testimony in this matter points up convincingly the reason for Canon 12.

Reuben Richardson, M. D., a black doctor of medicine, testified that "Snowshoe" Smith solicited, and he, Dr. Richardson, gave to Smith, the sum of $1,000.00 to make things come out right in Richardson's divorce action.

There is no evidence that Respondent knew of this exchange of money; but, the evidence is clear that by the hiring of Smith, Respondent invited just such an occurrence.

Dr. Richardson's cynical words, "Way things were going, I had no other alternative" crys out more eloquently than the best of prose, for the careful selection of all judicially associated personnel lest the public entirely lose faith in the judicial system.

In addition to employing Smith, Respondent also employed from time to time his son and daughter. His son, who was partially invalided, was employed at the son's doctor's suggestion for therapeutic reasons; his daughter was employed primarily as summer relief help. While the Board concludes that such employment

may technically amount to nepotism, the Board believes that such employment did not amount to an intentional exploitation of nepotism.

Summarizing, therefore, the Board's findings with respect to activities of Respondent while on the Common Pleas Bench, the Board finds: That Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; that Respondent violated Canon 13 by suffering his conduct to justify the impression that his favor was unduly enjoyed by another; that Respondent violated Canon 34 in that he was not indifferent to partisan influences; and, that Respondent violated Canon 12 by employing one whom he knew, or should have known, was not possessed of the required character and fitness.

As to the allegations with respect to activities while on the Municipal Court Bench (Paragraph 9)

The evidence is uncontradicted that during his term as a Municipal Judge and while also a member of the Board of Directors of Harmony Loan Company, Respondent signed numerous judicial orders involving Harmony Loan Company.

The evidence is conflicting, and, therefore, not probative, as to whether any of Respondent's actions involved contested matters.

The Board, therefore, for the purposes herein finds only that Respondent signed numerous orders (over 350 according to one witness) in cases in which Harmony was a party but finds also that there is no con-

vincing evidence that Respondent rendered decisions in contested matters in which Harmony was a party.

Respondent asserts two defenses: that the allegations cannot be herein considered for the reason that such acts, if any, did not occur within Respondent's current term of office; and that the signing of the orders was purely administrative and not judicial and, therefore, not violative of the Canons of Judicial Ethics.

The Board disagrees with the latter defense. The signing of orders imports the full weight of the judicial office to the order. It is a judicial, not administrative, function. To the public, the distinction between contested and non-contested matters is a distinction without a difference; to the public, Respondent acted in violation of the spirit of the Canons of Judicial Ethics and with indifference to the ethical standards which "the people have a right to expect from" a Judge.

With respect to the defense that the acts, if any, did not occur within Respondent's current term, the Board finds as a factual matter that the acts did not occur within Respondent's current term. However, the Board further concludes that the fact that the acts did not occur within Respondent's current term does not bar this charge. Respondent is not herein charged as a Judge under Rule XXI but rather as an attorney under Rule XVIII. Any limitation must, therefore, be that applied to attorneys for violations of the Canons of Ethics. Clearly the charge is timely as applied to an attorney and no claim is made by Respondent that it is not. The fact that the violations complained of happen to be violations of the Canons of Judicial Ethics

—the observance of which is also imposed on attorneys when serving as Judges—does not shorten the limitation time or otherwise moderate or alter the defenses afforded attorneys under Rule XVIII.

The Board, therefore, finds that Respondent signed numerous Judicial Orders, during his term as Municipal Judge, which involved cases in which a company, of which he was contemporaneously a director, was a party; that such acts constituted violations of Canons 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics; and, that the consideration of such acts is properly before this Board.

The Motion to Dismiss and the allegations of the Supplemental Complaint with respect to the attempts to influence the handling of the original Complaint

The Motion to Dismiss the Supplemental Complaint raises two questions: whether the charge of "additional acts of professional misconduct" without reference to specific Canons is sufficiently explicit to apprise Respondent of the charges and whether the evidentiary facts demonstrate a sufficient basis for a charge under any of the Canons.

The Board has had to keep in mind the fact that Respondent, while both a Judge and a lawyer, at the time of the incidents involved, was also the client and was not an active participant in the colloquies that gave rise to the Supplemental Complaint.

The Supplemental Complaint is based entirely upon conversations which took place between Respondent's

counsel and others. Respondent did not participate in these conversations.

The charge, which the Board views as extremely serious, is that Respondent caused his counsel to make threats to members of the Cincinnati Bar Association allegedly for the purpose of causing this matter to be heard under Rule XVIII rather than Rule XXI.

Witness Wirthlin, in the view of the Panel, did, in fact, justifiably believe that a threat had been made against him, and his family, by Respondent's counsel and is to be commended for rejecting what he viewed to be a threat and bringing the matter before this Committee. The testimony concerning the conversation between Mr. Wirthlin and Respondent's counsel supports the conclusion that language was employed by Respondent's counsel which was reprehensible.

However, Respondent enters this conversation and the conversation alleged in the first paragraph of the Supplemental Complaint only by inference.

The Board concludes, therefore, that the evidence fails to establish that Respondent directed the actions of his counsel which led to the filing of the Supplemental Complaint.

The Supplemental Complaint must, therefore, be dismissed. Since the Supplemental Complaint must be dismissed, we need not reach the question of the import of the words "further acts of misconduct."

RECOMMENDATIONS

As to the allegations with respect to personal, social conduct (Paragraph 1 of the original Complaint)

The Board has found that the conduct of Respondent in relation to Miss Chasteen's presence in Respondent's apartment gave the appearance of cohabitation and, therefore, impropriety in violation of Canon 4 of the Canons of Judicial Ethics. In mitigation, the Board has had to consider the fact that Respondent was separated from his first wife, that during most of the period, in fact, Respondent and his first wife had executed a separation agreement and that Respondent subsequently married Miss Chasteen. The Board, therefore, recommends a private reprimand for this violation, taken alone.

As to the allegations with respect to Respondent's activities while on the Common Pleas Bench (Paragraphs 8, 10 and 11 of the original Complaint)

The Board has found that Respondent in his relationship with Harmony Loan Company and with one of his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34, and in hiring "Snowshoe" Smith has violated Canon 12 of the Canons of Judicial Ethics.

The Board can find no mitigating circumstances.

There were no compelling reasons for the maintenance of the Harmony relationships nor for the hiring of Smith. Indeed, there were compelling reasons which

would have been evident even to the inexperienced and unsophisticated to have refrained from all three relationships.

The conduct of Respondent in establishing and continuing these relationships cannot help but have brought his court into disrepute. One Panel member wrote: "I feel that the Hamilton County Domestic Relations Court, its personnel, practice and procedures fall far below acceptable standards when we consider the same from an ethical point of view or from a public relations standpoint."

For these violations considered together, the Board, therefore, recommends indefinite suspension.

As to allegations with respect to Respondent's activities while on the Municipal Court Bench (Paragraph 9 of the original Complaint)

The Board has found that Respondent has violated Canons 4, 13, 25, 26, 29 and 34 of the Canons of Judicial Ethics by signing orders in cases in which Harmony Loan Company, of which he was contemporaneously a director, was a party, albeit non-contested cases.

Again, there are no mitigating circumstances.

The actions of Respondent under this charge are again precisely the type that brings the legal system into disrepute.

However, the Board has had to consider that the actions herein complained of are in the past and that

there is no evidence of "harm done" to any litigants (cf. the testimony by the medical doctor under Paragraph 10 of the original Complaint).

The Board recommends Public Reprimand for the violations alleged under this charge.

FINAL RECOMMENDATION

Viewing the charges cumulatively rather than individually, the Board concludes that Respondent over an extended period of time has displayed continuing indifference to the Canons of Judicial Ethics, "as a proper guide and reminder for judges."

It is the recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio that Respondent, George S. Heitzler, Jr., be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio (Section 6(b) of Rule V of the Rules for the Government of the Bar of Ohio.)

Howard S. Lutz
Chairman, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

William D. Radcliff
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

THE STATE OF OHIO,
City of Columbus.

THE CINCINNATI BAR ASSOCIATION,
Relator,

vs.

GEORGE S. HEITZLER, JR.,
Respondent.

1972 TERM
To wit:
Friday, September 1, 1972
No. DD 72-3

ORDER TO SHOW CAUSE

It appearing to the Court that the Board of Commissioners on Grievances and Discipline has filed a final report in the office of the Clerk of the Supreme Court, recommending that the Respondent, George S. Heitzler, Jr., be indefinitely suspended from the Practice of Law pursuant to Section 6(b) of Rule V of the Rules for the Government of the Bar of Ohio, it is ordered by the Court that the Respondent, George S. Heitzler, Jr., show cause, why the recommendation of the Board of Commissioners shall not be confirmed and the disciplinary order entered.

It is also ordered that objections to the findings and recommendation of the Board of Commissioners together with a brief in support of objections will be due on or before September 21, 1972.

C. William O'Neil
Chief Justice

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page .....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 1st day of September, 1972.

Thomas L. Startzman, Clerk
By Sam F. Adkins, Deputy

Cincinnati Bar Association v. Heitzler.

[Cite as Cincinnati Bar Assn. v. Heitzler (1972), 31 Ohio St. 2d .]
D.D. No. 72-3—Decided September 7, 1972.

Per Curiam. It is noted that on September 1, 1972, the Board of Commissioners on Grievances and Discipline of this court filed with the court findings of fact and recommendation in the matter of a complaint by the Cincinnati Bar Association against George S. Heitzler, Jr., presently serving as Judge of the Domestic Relations Division of the Court of Common Pleas of Hamilton County; it is further noted that it is the recommendation of said board that George S. Heitzler, Jr. be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio (Section 6[b] of Rule V of the Rules for the Government of the Bar of Ohio).

Therefore, without passing upon the merits of the findings and recommendation of the Board, and pend-

ing a hearing in this court on such findings and recommendation, together with such objections and answer and brief as may be filed by the Respondent, Judge Heitzler, the Chief Justice of this court is hereby authorized and directed, pursuant to Section 5, Article IV of the Constitution, to order that Judge Heitzler hear no further cases or other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County or perform any other judicial duties until this court renders its decision and judgment in the matter.

Under the rules of this court, respondent has until September 21, 1972, to file his objections to the Board's report and his brief in support thereof. Relator is given until September 28, 1972, to file a reply brief.

The case is set for oral argument on October 10, 1972.

It is so ordered.

O'Neill, C. J., Herbert, Corrigan, Stern, Leach and Brown, JJ., concur. Schneider, J., not participating.

THE STATE OF OHIO,
City of Columbus.

CINCINNATI BAR ASSOCIATION

vs.

GEORGE S. HEITZLER, JR.

1972 TERM
To wit:
September 8, 1972
No. D.D. 72-3

ORDER

Pursuant to the authorization and order of this Court, issued in this matter on September 7, 1972, it is hereby ordered that Judge George S. Heitzler, Jr., hear no further cases or other matter pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County nor perform any other judicial duties until this Court renders its final decision and judgment in this matter.

C. William O'Neill
Chief Justice

NO. DD 72-3

IN THE
SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
Relator,

vs.

GEORGE S. HEITZLER, JR.,
Respondent.

MOTION FOR RECONSIDERATION AND FOR A HEARING

Filed
Sept. 18, 1972
Supreme Court of Ohio
Thomas L. Startzman,
Clerk

GEORGE S. HEITZLER, JR.
Hamilton County Court House
Room 417
Court & Main Streets
Cincinnati, Ohio 45202
Pro Se

R. O. Klausmeyer
John J. Getgey
C. Donald Heile
26 East Sixth Street
Cincinnati, Ohio 45202
Attorneys for Relator

IN THE
SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
Relator,

vs. No. DD 72-3

GEORGE S. HEITZLER, JR.,
Respondent.

MOTION FOR RECONSIDERATION AND FOR A HEARING

Comes now Respondent and moves the Court for a reconsideration of its Decision in this cause entered September 7, 1972, in which the Court authorized and directed the Chief Justice " . . . to order that Judge Heitzler hear no further cases or other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County or perform any other judicial duties until this Court renders its Decision and Judgment in the matter", and, further, moves the Court for a hearing.

Respondent states that the action taken by the Court, herein sought to be reconsidered, was taken without notice to Respondent, and Respondent was given no opportunity to be present, either personally or by counsel of his choice; and Respondent further states that there is no authority, explicit or implicit, in the provisions or terms of Article IV, Section 5, of the Ohio Constitution, Ohio Revised Code Sections 2701.11 and 2701.12, or in Gov. R. V (formerly Rule XVIII of the Rules of Practice) or Gov. R. VI (formerly Rule XXI of the Rules of Practice).

Respondent asserts that the action of the Court violated the rights guaranteed him by Article I, Sections 1 and 16, of the Ohio Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

Respondent, therefore, prays for an order setting this cause for a hearing at which he be permitted to appear and be heard and be represented by counsel of his choice.

George S. Heitzler

APPENDIX

UNITED STATES CONSTITUTION
AMENDMENT [V]
[Rights of Persons]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT [XIV]
[Rights of Citizens]

§1 [1]All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citi-

zens of the United States and of the State wherein they reside. No State shall [2]make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State [3]deprive any person of life, liberty, or property, without due process of law; nor [4]deny to any person within its jurisdiction the equal protection of the laws.

OHIO CONSTITUTION

ARTICLE I: BILL OF RIGHTS

§1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety. (See Const. 1802, Art VIII, § 1.)

§16 [Redress in courts.]

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3, 1912.)

Vote: "Yes," 306,764; "No," 216,634.

Original § 16 read as follows: "Sec. 16. [Of redress in courts.] All courts shall be open, and every person,

for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay. (See Const. 1802, Art VIII, § 7.)"

OHIO REVISED CODE

§2701.11 Rules for retirement, removal and suspension of judges; appointment of commission.

Subject to rules *implementing sections 2701.11 and 2701.12 of the Revised Code,* that shall be promulgated by the supreme court, *upon written and sworn complaint setting forth the cause or causes* and after *reasonable* notice *thereof* and • *an opportunity to be heard,* any judge may be retired for disability, • removed for cause, or suspended without pay for cause by a commission composed of • *five judges* of • *this state,* all of whom shall be appointed by the supreme court • *from among judges of the courts of record located within the territorial jurisdiction in each of any five of the appellate districts, not including that within which the respondent judge resides.*

Such a commission shall be appointed by the supreme court upon receipt of a report of its board of commissioners on grievances and discipline that such board has received a written and sworn complaint alleging that cause exists for retirement, removal, or suspension of a judge under section 2701.12 of the Revised Code, and that upon investigation and a finding by at least two-thirds of the members of such board that there is substantial credible evidence in support of such complaint. Any judge so retired, removed, or suspended may appeal, *on the record made before the com-*

mission, from the commission's action to the supreme court. • The commission, the court, or a judge thereof may stay execution of an order pending disposition of an appeal. The court may affirm, reverse, or modify the order of the commission.

Members of the commission shall be reimbursed from the state treasury for their actual and necessary expenses in connection with their service on the commission.

The administrative assistant of the supreme court shall be the secretary of each commission appointed to consider retirement, removal, or suspension of a judge. The secretary shall certify each order of a commission which commands the retirement, removal, or suspension of a judge to the governor, the chief justice of the supreme court, and the officer required by law to draw warrants for payment of the salary of such judge.

Upon the request of any such commission, the attorney general shall assist in the performance of its duties.

History: 130 ▼ Pt. 2, 142 (Eff 12-18-64); 131 ▼ 665. Eff 10-30-65.
Law review

Judicial ethics—a crisis of confidence. Hon. Robert A. Ainsworth, Jr. 42 OBar (No. 35) 1111.

§2701.12 Retirement, removal or suspension of judge.

(A) Cause for removal or suspension of a judge from office without pay under section 2701.11 of the

Revised Code exists when he has, since first elected or appointed to judicial office:

(1) Engaged in any misconduct involving moral turpitude, or a violation of such of the canons of judicial ethics adopted by the supreme court as would result in a substantial loss of public respect for the office;

(2) Been convicted of a crime involving moral turpitude; or

(3) Been disbarred or suspended for an indefinite period from the practice of law for misconduct occurring before such election or appointment.

(B) Grounds for retirement of a judge from office for disability exist when he has a permanent physical or mental disability which prevents the proper discharge of the duties of his office.

(C) Grounds for suspension without pay of a judge from office for disability exist when he has a physical or mental disability which will prevent the proper discharge of the duties of his office for an indefinite time.

History: 131 v. 665. Eff 10-30-65.

Art. IV,

§5 [Additional powers of supreme court; supervision; rule making.]

(A) (1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be

exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas temporarily to sit or hold court on any other court of common pleas or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules

shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law. (Adopted May 7, 1968.° No analogous to former § 5, repealed Oct. 9, 1883.)

THE STATE OF OHIO,
City of Columbus.

THE CINCINNATI BAR ASSOCIATION,
Relator,

vs.

GEORGE S. HEITZLER, JR.,
Respondent.

1972 Term
To wit:
Friday, October 6, 1972
No. DD 72-3

ENTRY

Upon consideration of the entry of appearance and motion for leave to appear and argue filed by Stanley E. Preiser, John B. Carrico and David C. McCue of the firm of Preiser & Wilson of Charleston, West Virginia, on behalf of the above named respondent, it is ordered by the court that such entry and motion be, and the same hereby is, sustained.

It is further ordered that such counsel is hereby notified that objections and brief in support of the objections on behalf of the respondent is due to be filed on or before October 20, 1972.

C. William O'Neil
Chief Justice

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
Relator,

v.

No. DD 72-3

GEORGE S. HEITZLER, JR.,
Respondent.

Motion to quash and dismiss the findings of fact and recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in the above captioned case; and motion to dismiss and recuse each and every member of the 17-man Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio as to all matters involving Respondent.

PREISER & WILSON
STANLEY E. PREISER
JOHN B. CARRICO
DAVID C. MCCUE
Counsel for Respondent

PREISER & WILSON
1012 Kanawha Boulevard, East
P. O. Box 2506
Charleston, West Virginia 25329

Filed
Oct. 17, 1972
Supreme Court of Ohio
Thomas L. Startzman,
Clerk

IN THE SUPREME COURT OF OHIO

THE CINCINNATI BAR ASSOCIATION,
Relator,

v.

No. DD 72-3

GEORGE S. HEITZLER, JR.,
Respondent.

Motion to quash and dismiss the findings of fact and recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in the above captioned case; and motion to dismiss and recuse each and every member of the 17-man Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio as to all matters involving Respondent.

Now comes the Respondent, George S. Heitzler, Jr., and shows unto this Honorable Court as follows:

1. On the 11th day of August, 1971, three members of The Cincinnati Bar Association, namely R. O. Klausmeyer, John J. Getgey and C. Donald Heile, filed with the Board of Commissioners on grievances and discipline of the Supreme Court of the State of Ohio a complaint and certificate against George S. Heitzler, Jr., Judge of the Court of Common Pleas (Division of Domestic Relations) of Cincinnati, Hamilton County, Ohio, wherein eleven (11) paragraphs recited certain alleged acts on the part of George S. Heitzler, Jr., which *allegedly constituted grounds for misconduct as a Judge,* assigning violations of certain Canons of Judicial Ethics.

2. On the 9th day of September, 1971, George S. Heitzler, Jr., filed an answer with said Board denying the charges.

3. On October 4, 1971, Relator filed a supplemental complaint wherein two (2) additional charges of alleged acts of misconduct were filed against the Respondent.

4. On October 27, 1971, Respondent filed an answer to the supplemental complaint denying those charges.

5. The complaint and answer, and the supplemental complaint and supplemental answer designated as Case No. 168, came on for hearing, commencing December 16, 1971, before a Hearing Panel of the Board of Commissioners; the hearings lasted approximately six days during which time testimony was taken and transcribed; and on January 7, 1972, the hearing before the Hearing Panel of the Board of Commissioners was concluded.

6. That during said hearings Respondent moved to dismiss the charges filed against him in the supplemental complaint, and the Hearing Panel reserved a ruling on said motion to dismiss.

7. At the conclusion of testimony and after the Hearing Panel reserved their ruling on Respondent's motion to dismiss the supplemental complaint, the Hearing Panel set forth a well-defined time schedule for the filing of all briefs on the original complaint in Case No. 168, and a well-defined time schedule for the filing of briefs on the Respondent's motion to dismiss the supplemental complaint.

Both sides filed their briefs on the motion to dismiss the supplemental complaint within the time allowed.

8. The Hearing Panel had provided, as to the time for filing briefs on the merits of Case 168, that the Relator was to have two weeks following notice of the ruling of the Hearing Panel on Respondent's motion to dismiss the supplemental complaint, and Respondent was to have two weeks after receipt of Relator's brief to file his brief.

However, the Hearing Panel on August 4, 1972, without notice to the Respondent, filed their findings of fact and recommendations with the Secretary of the Board of Commissioners and at the same time sustained Respondent's motion to dismiss the supplemental complaint. Thus Respondent, even though originally granted time by the Hearing Panel to file a brief on the merits of Case No. 168, was denied the right to file that brief because the Hearing Panel decided the case on the merits and made their recommendations and findings of fact weeks before Respondent's brief on the merits was due to be filed in accordance with the Hearing Panel's own ruling.

The Board of Commissioners filed its findings of fact and recommendations with the Secretary of the Board on September 1, 1972.

9. Respondent and his counsel did not learn of the aforesaid action of the Hearing Panel or Board until the night of September 1, 1972, when they read in the newspapers that the Board of Commissioners had filed with the Secretary of the Board its findings of fact and

recommendations. No formal notice from the Board or Secretary of the Board was received by Respondent or his attorneys until September 5, 1972.

Immediately thereafter one of the attorneys of record for Respondent telephoned the Secretary of the Board of Commissioners and requested on behalf of Respondent a copy of the Hearing Panel's findings and recommendations and was told the same was not available to Respondent.

After counsel for Respondent was orally advised by the Secretary of the Board that the Hearing Panel's findings and recommendations were not available to him, then on September 5, 1972, he wrote to the Secretary of the Board again requesting that report, which request was apparently ignored.

Thereafter Judge Heitzler personally wrote to the Secretary of the Board requesting a copy of the Panel's findings and recommendations. Finally on September 20, approximately 45 days after being filed with the Secretary of the Board, and 19 days after the Board of Commissioners had filed its findings and recommendations, a copy of the Hearing Panel's findings of fact and recommendations was sent to Respondent.

Therefor, the Hearing Panel in violation of its own rulings denied to Respondent effective assistance of counsel and the right to file a brief on the merits of the case, and the Board of Commissioners made their findings of fact and recommendations without giving Respondent a right to be heard and without giving Respondent a right to file a brief on the merits.

To compound the complete denial of any semblance of due process and the total and complete denial to Respondent of his basic constitutional rights and right to counsel, R. O. Klausmeyer acting on behalf of the Relator on August 9, 1972, filed a brief on behalf of Relator with the Hearing Panel, and in his covering letter recited that he knew he was filing that brief before it was due. In the very same letter Mr. Klausmeyer recited and acknowledged that by filing the Relator's brief early he did not intend to impose upon Respondent any obligation to file his brief at a time earlier than that previously assigned.

As a consequence, the Board of Commissioners had before it in their consideration of the merits of this case, only the brief of Relator and denied Respondent any right to argue, discuss or brief the merits of the case.

In further disregard of the rights of Respondent, on the same day the Hearing Panel filed with the Secretary of the Board of Commissioners their findings of fact and recommendations, the sum total of which recommended that Respondent be indefinitely suspended from the practice of law, to-wit on August 4, 1972, the Board of Commissioners met from only 2:00 p.m. to 4:30 p.m. on that day. At that meeting only fifteen (15) members of the Board of Commissioners attended. Two were absent and Mr. Gordon Scherer although present allegedly did not discuss the proceedings in this case, nor vote on the same. Messers Snyder and Green were absent.

10. Three (3) members of that Board of Commissioners who acted in Case 168 had sat as the Hearing

Panel in Case 172 which involved other charges against Respondent. They were Norton Webster, John C. Sheppard and Howard Lutz, and Howard Lutz signed the findings of fact and recommendations of the Board of Commissioners in Case 168.

In addition, Gordon Scherer, even though allegedly not participating in the discussion or voting on the proceedings in Case 168 was present during those discussions and further, as hereinafter alleged, the said Gordon Scherer had been active in grand jury proceedings directed against Respondent, and had testified as a witness in Relators Case 168 against Respondent.

Even though the Board of Commissioners at their 2½ hour meeting on August 4, 1972, stated that the recommendations of the Hearing Panel in Case 168 was "unanimously" adopted by the Board, the facts are that it was only unanimously adopted by fourteen (14) members of a seventeen (17) man board.

The transcript of testimony in Case 168 before the Hearing Panel and presented to the Board of Commissioners to be considered during their 2½ hour meeting was 1408 pages, and it is respectfully submitted that there was only one copy available and that no member of the Board of Commissioners could have read that transcript of testimony (much less all of them) in the 2½ hour meeting. Additionally, during the same 2½ hour meeting, matters other than Case 168 were considered.

Respondent therefore further alleges that there was a total abrogation of the duties and responsibilities of the Board of Commissioners and an unconstitutional

and unlawful delegation of their authority to the Hearing Panel, especially when the findings of fact and recommendations of the Board of Commissioners are almost word for word the same as the findings of fact and recommendations of the Hearing Panel.

11. On September 1, 1972, the Supreme Court of Ohio filed an order directing Respondent to show cause why the recommendations of the Board of Commissioners should not be confirmed and disciplinary order entered.

12. On September 7, 1972, the Supreme Court of Ohio in a per curiam opinion without passing on the merits of the findings and recommendations of the Board of Commissioners or Hearing Panel found that Respondent should exercise no further judicial duties until the Supreme Court of Ohio renders its decision and judgment in the matter.

13. On September 8, 1972, by order signed by Chief Justice C. William O'Neil, George S. Heitzler, Jr., was directed not to hear any further cases or any other matters pending in the Domestic Relations Division of the Common Pleas Court of Hamilton County, and was also directed not to perform any other judicial duties until the Supreme Court of Ohio renders its final decision.

14. Also on September 8, 1972, by order of the Supreme Court of Ohio a retired Judge was assigned to fill the vacancy of the Respondent Judge Heitzler pending further action by the Supreme Court of Ohio.

15. On September 18, 1972, George S. Heitzler, Jr., *pro se*, filed with this Honorable Court a motion for

reconsideration and for a hearing wherein Respondent set forth various grounds which he believed entitled him to a reconsideration of the order previously entered, which order removed George S. Heitzler, Jr., from acting in any judicial capacity. This motion was denied.

16. The presence of Mr. Gordon H. Scherer during the deliberations of the Board of Commissioners on Grievances and Discipline constituted an undue and coercive influence upon the deliberations of the Board.

Gordon H. Scherer was present during the deliberations conducted with respect to this case. The minutes of the Board conclusively demonstrate that Mr. Scherer was present although "[he] took no part in the discussion or voting in Case No. 168." (See the attached copy of the extracted portion of the minutes of the Board which extract was furnished to counsel by Respondent, Respondent's Exhibit No. 1 which is hereby adopted by reference as though fully set out herein).

The mere physical presence of Mr. Scherer was prejudical. Although he did not vote and did not participate in the discussions, this does not vitiate the fact that Gordon H. Scherer was also the same person who had previously "played a key role in launching the scheduled Grand Jury investigation of the Hamilton County Domestic Relations Court", seeking to have Respondent, George S. Heitzler, Jr., indicted. (See newspaper article attached hereto and made a part hereof the same as if fully set out herein as Respondent's Exhibit No. 2).

The grand jury which considered the evidence presented in part by Mr. Gordon H. Scherer did *NOT* return an indictment against Respondent.

Reference to the oral testimony of Gordon H. Scherer conclusively demonstrates the prejudice he harbored toward Respondent. Gordon H. Scherer was the Chairman of the Hamilton County Republican Central Committee and was a member of the Executive Committee of the Ohio State Republican Organization. He had recommended that Judge Heitzler be endorsed as the Republican candidate for the Domestic Relations Court. Relations apparently soured between Scherer and Judge Heitzler sometime during 1970.

Next came the attempt to indict Judge Heitzler. Gordon H. Scherer made it unequivocally clear when he stated on recross examination during the Panel hearings that he was "very critical of *** the Prosecutor's handling of the case". Furthermore, Gordon H. Scherer quoted with obvious displeasure portions of the record from the public portion of the report of the grand jury.

Finally, of all seventeen Board members, Gordon H. Scherer was the only member from Hamilton County. As a result it was probable that his testimony was given great weight by the Panel and in turn by the Board on which he sat. There was no need for him to enter into further discussions, nor to vote. The bias of Gordon H. Scherer does not need further amplification. Permitting a witness for the Relator to remain sitting on the Board during their deliberations is tantamount to permitting the prosecuting attorney or at least the chief prosecuting witness to remain with the

petit jury during the deliberations in a criminal case. Where a person is a witness in an investigatory proceeding relating to serious charges of alleged misconduct on the part of a member of the judiciary, and when this witness is also a member of the Board charged with making an impartial finding of fact relating to such alleged charges, and where such witness —member has previously exhibited the existence of substantial bias and there is present the inference of outright prejudice, permitting such member—witness to remain present during the deliberations leaves the impartiality of the Board's decision open to grave question. There is no doubt that because of the presence of Gordon Scherer, the deliberation of the Board cannot be considered impartial.

17. The Board of Commissioners was prejudicially and unconstitutionally constituted and their action was and is unlawful, and unconstitutional because three members of that Board who sat and made findings and recommendations in Case No. 168, had heard evidence in Case No. 172, a pending companion case involving this same Respondent, but based upon different charges. This constitutes a shocking disregard of Respondent's right to due process.

Case No. 168 was heard in December of 1971. Case No. 172 was heard in May of 1972. Determination by the Board of Case No. 168 was finalized and filed in September, 1972. The fifteen (15) man Board of Commissioners on Grievances and Discipline which heard and passed on Case No. 168 included Roger H. Smith, Erle Bridgewater and John O. Henry, who constituted the Hearing Panel that had originally heard Case No.

168. The Panel that heard Case No. 172 before Case No. 168 was finalized included; Norman Webster, Howard Lutz and John C. Sheppard. These men also sat on the Board that filed the final report in 168 and Mr. Lutz signed as Chairman of the Board the final recommendation in 168. It is obvious that three members have played a dual role and have been privy to information that undoubtedly improperly influenced their judgment and that the findings and recommendations of the Board are tainted and should be quashed and dismissed and that the entire Board should be dismissed and recused from further matters involving this Respondent.

18. The charges against Respondent in Case No. 172 grew out of and were a direct result of the Board's investigation into Case No. 168. Even though Respondent was formally charged in 172 he had already testified in Case No. 168 as to the charges brought against him later in May in Case No. 172.

19. This proceeding is quasi-criminal in nature.

20. The Hearing Panel and the Board of Commissioners have failed to follow the Rules provided by this Honorable Court in that under Rule V proviso is made that a majority of the Board of Commissioners shall constitute a quorum but no such provision is contained in Rule VI. In addition the obligations implicitly imposed and inherent within the Rules of this Court require the Board of Commissioners to independently examine the evidence against the person charged, which in this case they could not have done in their August 4, 1972, 2½ hour meeting.

21. The Board of Commissioners findings and recommendations as to violation of Canon 25 are violative of due process standards, in that Respondent's conduct conformed to the basic judicial standard existing in Cincinnati, Ohio. Judges in Cincinnati, Ohio, can and do sit on Boards of Directors of lending institutions and corporations and that factor, in itself, cannot establish a claim of use of influence to promote business as contended by the Board in their findings.

The Board stated in their findings on page 10:

> ". . . That Respondent violated Canon 25 by using the power of his office and the influence of his name to promote the business interests of others; . . ."

Respondent served as a director of a Kentucky corporation known as Harmony Loan Company, authorized to do business only in Kentucky, not in Ohio where Respondent served as a Judge. During the period of 1964 to August, 1971, Respondent did not participate in management and was not active in the business, nor did he attend directors' meetings during this period. He invested a total of $30,000.00 composed of his son's and his wife's money in this corporation in the form of non-voting stock and five and ten year debentures. There is no evidence that Respondent at any time used the power of his office or name to promote the business. The Board has stated that "Respondent permitted his name to be used in a prospectus used in connection with the sale of debentures . . . and also permitted his name and biography . . ."

An examination of the prospectus in question reveals that the address of Respondent is incorrect, and the

biographical information contained therein is also incorrect. This erroneous information in the prospectus proves the Respondent did not have knowledge of the brochure or prospectus which had been circulated without his knowledge.

There is absolutely no evidence that Respondent knew of the prospectus involved and no evidence that the Respondent permitted or used the power of his office or the influence of his name to promote the business interests of others. The contrary is shown in affidavits of Respondent Heitzler and Frank Spampinato, Vice President of said Harmony Loan Company, (which affidavits are attached hereto and made a part hereof the same as if fully set out herein, and marked for identification as Respondent's Exhibits No. 3 and 4). The facts are conclusively established that Respondent did not know of the existence of the brochure or prospectus and did not know or permit the use of the power of his office or the influence of his name to promote the business interests of Harmony Loan Company. One of the findings by the Board of misconduct on the part of the Respondent upon which they base their recommendation of indefinite suspension relied upon a finding that cannot constitutionally be made and was made without due process of law and without any evidence to substantiate the same.

Canon 25 of the Canons of Judicial Ethics does not specifically state that a judge cannot be a member of a Board of Directors. It only prohibits allowing one to permit the power of his office or name to be used for influence. This did not happen in this case.

A close scrutiny of the judicial standards of the community must be made before any discredit is attempted to be put on Respondent for alleged misconduct. An affidavit of Mr. Wilbert F. Stagenhorst shows the results of an investigation establishing the judicial standards in this regard in Ohio, in that other judges in Ohio are on various Boards of Directors. That affidavit is attached hereto and made a part hereof the same as if fully set out herein and marked as Respondent's Exhibit No. 5. That affidavit graphically reveals the standard in the community regarding the membership of judges on boards of financial institutions and corporations which standard is that it is common and proper for judges to be members of these boards. The names of these judges and the Boards of Directors of the institutions upon which they are members are duly noted in the affidavit.

It is to be noted further that this affidavit covers only financial institutions located in Ohio and does not cover business or charitable enterprises which, of course, come under the same Canon.

22. The standard of hiring personnel working for Hamilton County and the policy of the State of Ohio and the policy of the American Bar Association is to rehabilitate those with a criminal record by hiring them. Respondent has been charged and found guilty of employing one with a criminal record and because of that employment the Board found that Respondent had violated the Judicial Canons.

Rufus Smith had been hired in a nonsensitive position, the purpose of which was to call cases and escort litigants to the proper referee in the Domestic Rela-

tions Court of Hamilton County. Mr. Smith was convicted of a felony January 26, 1955, served his time and paid his debt to society. After that one felony he has had no further felony convictions. During Rufus Smith's service with Hamilton County Courts he suffered no arrests or infractions of the law. It appears that a man whose only felony conviction was in 1955 should be given every opportunity to rehabilitate himself.

Wilbert F. Stagenhorst personally conducted an investigation regarding the employment standards of hiring employees of Hamilton County who have a prior criminal record. His affidavit showing the results of his investigation is attached hereto and made a part hereof the same as if fully set out herein and marked as Respondent's Exhibit No. 6. This affidavit lists people working for Hamilton County who have prior records. It should be noted that a guard for the County Court, who is still working, has a record which includes charges of serious crimes of violence. The Board did not take into consideration the standard in this nation or the State of Ohio or Hamilton County, regarding the hiring of people with a prior record, and in finding that Respondent had violated the Canons of Judicial Ethics in this regard, they failed to follow minimum standards. Neither the existing standard nor the Canons of Judicial Ethics were violated by Respondent, and hence Respondent has been denied due process of law, and his constitutional rights were violated by a finding of misconduct in pursuing conduct which cannot be constitutionally prohibited or proscribed in this manner but to the contrary should be encouraged.

23. The Hearing Panel and the Board of Commissioners in their findings and recommendations found

that Respondent was guilty of certain breaches of the Canons of Judicial Ethics, to-wit:

a. Canon 4; "that the conduct of Respondent in relation to Miss Chasteen's (Judge Heitzler's present wife) presence in Respondent's apartment gave the appearance of cohabitation and therefore impropriety in violation of Canon 4 of the Judicial Ethics."

For this violation, taken alone, the Board recommended a private reprimand.

b. Canons 13, 25, 12 and 34; "That Respondent in his relationship with Harmony Loan Company and with one of his fellow directors of Harmony Loan Company has violated Canons 13, 25 and 34 and in hiring 'Snowshoe Smith' has violated Canon 12 of the Canons of Judicial Ethics."

For the above violations "considered together" the Board recommended an indefinite suspension.

c. Canons, 4, 13, 25, 26, 29 and 34; That Respondent violated the aforementioned Canons of Judicial Ethics "by signing orders in cases in which Harmony Loan Company, of which he was contemporaneously a director, was a party, albeit in non-contested cases," while Respondent was on the Municipal Court bench.

Because there was no evidence of harm done to any litigant for the above violations the Board recommended a public reprimand.

The Board further recommended that as a result Respondent should be indefinitely suspended from the practice of law.

The record in this case, the transcript of testimony, and the additional evidence submitted with this motion to quash and dismiss establishes that the findings of fact by the Hearing Panel and Board of Commissioners cannot be substantiated, and their findings that Respondent has violated certain Judicial Canons of Ethics are based upon conduct exercised by the Respondent, if it was exercised at all, that cannot be constitutionally prohibited and for which neither a judge nor lawyer can be punished within the purview of his constitutional rights as an individual citizen, as a lawyer and as a judge.

Consequently, for this Honorable Court to accept the findings and recommendations of the Board or to consider them would violate the constitutional guarantees of Respondent, and therefore said findings of fact and recommendations should be quashed and dismissed without further consideration by this Honorable Court. To do otherwise would be tantamount to denying Respondent his constitutional right of due process and his other constitutional rights guaranteed to him by virtue of the First, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution.

To further illustrate the biased and unjustified findings of fact and recommendations of the Hearing Panel and Board of Commissioners and to demonstrate to this Honorable Court that the findings of fact and recommendations of the Board of Commissioners are not based upon the evidence and are based upon inferences and conclusions contrary to the true facts, Respondent attaches to this motion as exhibits the

affidavits of Carol Chasteen Heitzler and Geoffrey Heitzler, that the Respondent did not live with Carol Chasteen nor did he live under such circumstances as to leave an impression of impropriety, which affidavits are attached hereto and expressly made a part hereof the same as if fully set out herein and are marked for identification as Respondent's Exhibits No. 7 and 8.

24. When this Honorable Court entered its order of September 8, 1972, prohibiting the Respondent from performing further judicial functions until its final decision in this matter, it violated the Respondent's constitutional rights in that he was not granted the due process of law required by the Constitution of the United States.

Respondent was denied a hearing on the question of his removal, temporary or otherwise, and he was denied his statutory rights, assured him by the laws of the State of Ohio, Ohio Revised Code §2701.11 and §2701.12 and he was denied the due process required by the procedures set forth in the Rules of this Court for removal of Judges, Rule VI.

Article IV, Section 5 of the Ohio Constitution as applied to Judge Heitzler in this case as a basis for suspension of his judicial duties without hearing or other proceedings, as was done herein, results in an unconstitutional application of the Ohio Constitution as applied to this Respondent in violation of the United States Constitution and its Amendments, or if said Article IV, Section 5 of the Ohio Constitution allows such a procedure as was followed here for temporary

suspension of the performance of judicial duties by a judge, without a hearing as was done in this case, then said Ohio Constitution is itself unconstitutional as being contrary to and violative of constitutional rights of due process required by the United States Constitution and its Amendments.

The action taken by this Honorable Court in prohibiting the Respondent from performing further judicial duties until the Ohio Supreme Court rendered its decision and judgment in this matter was taken without notice to the Respondent, without the right of Respondent to counsel, without the right of Respondent to a hearing, without the right of Respondent to be faced by his accusers, and was also taken in violation of the rights granted to him by the aforementioned statutes of the State of Ohio and the aforementioned Rules of disciplinary procedures adopted by this Honorable Court.

25. Respondent says that as a result of the foregoing he has been denied his right of due process of law and all of his constitutional guarantees in these proceedings and therefore these proceedings are and should be void. Respondent further says that the entry of the order of September 8, 1972 by this Honorable Court prohibiting him from further judicial action, being entered without notice or hearing, is not only a denial of *his* right to due process and *his* constitutional rights but is an infringement on the right of people of the State of Ohio to choose their judicial officers and have them continue to serve in a judicial capacity until and unless they are removed in accordance with the statutory laws of the State of Ohio and

the Rules of Procedure in Grievance matters adopted by this Honorable Court.

WHEREFORE, Respondent prays as follows:

1. That the order of September 8, 1972, of this Honorable Court prohibiting Respondent from performing further judicial duties until this Court renders its decision and judgment in the matter be set aside and held for naught in that that order must have been based, at least in part, upon the findings of fact and recommendations of either the Hearing Panel or the Board of Commissioners or both, and the transcript of testimony taken in this proceeding, all of which findings of facts and recommendations are biased, prejudiced and exist only as a result of the denial to this Respondent of due process of law and his other constitutional rights guaranteed to him as a citizen, as an individual, as a lawyer and as a judge.

2. That the findings of fact and recommendations of the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio be quashed and dismissed.

3. That the findings of fact and recommendations of the Hearing Panel of the Board of Commissioners be quashed and dismissed.

4. That the proceedings against Respondent be dismissed and that the Relator and Board of Commissioners be prohibited from pursuing the matters against Respondent which are set forth in Case 168 or Case 172 for the reasons set forth herein, and for

the reason that the Respondent has been denied his substantive constitutional rights, as well as his procedural constitutional rights to the effect that further proceedings in and of themselves would be so tainted with fruits of the poisonous tree that such further proceedings could not be fair or impartial or in compliance with constitutional guarantees.

5. In the alternative and if the relief prayed for above is refused, Respondent prays that this Honorable Court dismiss and recuse the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio from any further proceedings in Case 168 or Case 172 against this Respondent, and that the findings and recommendations of said Board of Commissioners and of the Hearing Panel be quashed and dismissed, and that this matter be remanded to a new unbiased, unprejudiced Board of Commissioners and Hearing Panel for hearings de novo with instructions from this Honorable Court to said Board of Commissioners and Hearing Panel that Respondent be granted all of his constitutional rights and his right to due process of law, and that the actions and proceedings of said Board of Commissioners and Hearing Panel be in accordance with the Rules promulgated by this Honorable Court in disciplinary proceedings and in accordance with the statutes of the State of Ohio, and that Respondent be informed under which rule the proceedings are being had, i.e., Rule V or Rule VI, and that the order of this Honorable Court of September 8, 1972, prohibiting the Respondent from performing further judicial functions be rescinded pending new findings of fact and recommendations by a newly constituted unbiased, unprejudiced Board of Commissioners.

6. And for such other relief to which the Respondent may be entitled and which this Honorable Court believes should be granted.

George S. Heitzler
Respondent
By Counsel

Stanley E. Preiser
John B. Carrico
David C. McCue
Preiser & Wilson
1012 Kanawha Boulevard, East
P. O. Box 2506
Charleston, West Virginia 25329
Counsel for Respondent

RESPONDENT'S EXHIBIT NO. 1

MINUTES

BOARD OF COMMISSIONERS ON GRIEVANCES
AND DISCIPLINE OF
THE SUPREME COURT OF OHIO
HELD AT COLUMBUS, OHIO
August 4, 1972

The meeting was called to order at 2:00 o'clock p.m. by Chairman Lutz.

Members present: Messrs. Scherer, Henry, Hoeffel, Smith, Moulton, Houston, Webster, Young, Coultrap, Walker, Richards, Sheppard, Faulkner, Bridgewater, and Chairman Lutz.

Members absent: Messrs. Snyder and Green.

Mr. Smith made the report for the hearing panel in Case No. 168, Cincinnati Bar Association, Relator, v. George S. Heitzler, Jr., Respondent. Mr. Smith moved, seconded by Mr. Bridgewater, that the Board find that the Respondent is guilty of misconduct as defined in Section 5(a) of Rule XVIII (Section 5(a) of Gov. R. V) and that his conduct violated Canons 1, 4, 13, 25, 26 and 34 of the Canons of Judicial Ethics and his conduct also violated Canon 12 of the Canons of Legal Ethics. The vote on the findings was unanimous.

Mr. Smith moved, seconded by Mr. Walker, that it be recommended that the Respondent, for his misconduct be suspended for an indefinite period from the practice of law pursuant to Section 6(b) of Rule XVIII (Section 6(b) of Gov. R. V). The vote on the recommendation of the Board was unanimous.

Mr. Scherer took no part in the discussion or voting in Case No. 168.

* * *

WHEREUPON, there being no further business, the Board of Commissioners on Grievances and Discipline did, at 4:30 o'clock p.m., adjourn to meet at 2:00 o'clock p.m. on October 27, 1972 at Columbus, Ohio.

William D. Radcliff
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

August 7, 1972

RESPONDENT'S EXHIBIT NO. 2

[News article will not engrave—Exhibit omitted]

RESPONDENT'S EXHIBIT NO. 3

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

George S. Heitzler, being first duly cautioned and sworn, deposes and says that at no time did he authorize or consent to the use of his name, title or picture in conjunction with any prospectus or literature of any kind connected with the Harmony Loan Corporation of Kentucky. Deponent further says that he had no knowledge that any such literature or prospectus were in existence or being used, published or circulated.

George S. Heitzler

Sworn to and subscribed before me this 12th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires, Nov. 29, 1974.

RESPONDENT'S EXHIBIT NO. 4

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Frank Spampinato, being first duly cautioned and sworn, deposes and says that from 1961 to 1972 he was Vice President of Harmony Loan Corporation of Kentucky. That part of this time Judge George S. Heitzler was a member of the Board of Directors of said corporation. That from time to time certain literature including, but not limited to, financial statements and prospectus, were required by Kentucky law to be published. Deponent further states that part of the information required to be published were names of the Board of Directors. Deponent further states that these names, including the name of Judge Heitzler, were published without the consent or knowledge of Judge Heitzler. Deponent further states that the sole reason for the publication of said names was to comply with the laws of the Commonwealth of Kentucky.

Frank Spampinato

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

RESPONDENT'S EXHIBIT NO. 5

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Wilbert F. Stagenhorst, being first duly cautioned and sworn, deposes and says that at the request of the attorneys for the Honorable George S. Heitzler, he personally conducted an investigation of the various Building and Loans and Savings Associations in Hamilton County to ascertain the number of judges of the courts of Hamilton County who were or are associated with these corporations as officers or directors. As a result of his investigation the following judges were found to be associated with the corporations listed together with their title:

Judge Wm. S. Morrissey.....Director
Molitor Building & Loan

Judge Melvin G. Rueger.....President
Delhi Savings & Loan

Judge Robt. V. Wood.....Vice President
Palmer Products

Judge Otis R. Hess.....Director
Highland Federal Savings & Loan

Judge Chase M. Davies.....Director
Pleasant Ridge Savings & Loan

Judge Joseph Luebbers.....Director
West Norwood Building & Loan

Judge Carl W. Rich.....Vice Pres. & Director
Home State Savings & Loan

Judge Carl W. Rich.....Director
Kennedy Savings & Loan

Judge Carl W. Rich.....Vice Pres. & Director
Central Hyde Park Savings & Loan

Judge Watson Hover.....Director
Ringold Savings & Loan

Also, see attached exhibits which were collected personally by deponent.

Wilbert F. Stagenhorst

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

[Exhibit omitted—would not engrave legibly]

RESPONDENT'S EXHIBIT NO. 6

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Wilbert F. Stagenhorst, being first duly cautioned and sworn, deposes and says that at the request of the attorneys for the Honorable George S. Heitzler, he per-

sonally conducted an investigation of the present employees of Hamilton County with previous criminal records. As a result of his investigation the following list of personnel, together with their titles, were found to be employed by the County of Hamilton at the Hamilton County Court House.

Name	Title
John Blankenship	Guard
Isaac Hodge	Watchman
Martin Joseph Johnson	Mechanic Helper, Sheriff's Dept.
Thomas Jones	Supervisor, Recorder's Dept.

Attached are the individual records for these men.

Wilbert F. Stagenhorst

Sworn to and subscribed before me this 10th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

9-6-72

John Blankenship, male black, 66 employed as a guard Hamilton County Court House is 1969. Presently still employed.

Attached, police record, homicide report and photo.

W. Stagenhorst

[Police records will not engrave—Exhibit omitted]

Martin Joseph Johnson, date of birth 8-23-27, Mechanic helper Sheriff Department. Presently employed.

[Police records will not engrave—Exhibit omitted]

Isaac Hodge, male, black, 47 (DOB 5-22-25).

Employed Hamilton County Court House as a watchman May 9, 1971—still employed.

[Police records will not engrave—Exhibit omitted]

Thomas Jones, date of birth, 10-29-12, Supervisor Recorder Department under Judson Hoy.

Subject failed to file income taxes from 1951 to 1963, Internal Revenue filed criminal charges for the years 1959-60-61. Subject convicted March 10, 1966 and was placed on 2 years probation.

Subject actively employed in the records office.

[Police records will not engrave—Exhibit omitted]

RESPONDENT'S EXHIBIT NO. 7

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Carol Sue Heitzler, being first duly cautioned and sworn, deposes and states that she resided with her father at Sylved Lane until her marriage to George Heitzler. Although she frequently visited the Erlene Drive apartment and assisted Geoffrey Heitzler with his medical problems, she did not move in until after her marriage to George Heitzler. Deponent further states that she was under subpoena by the Cincinnati Bar Association and present for all the hearings in Dayton, Ohio starting 12-16-71.

Carol Sue Heitzler

Sworn to and subscribed before me this 13th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public,
Hamilton County, Ohio
My Commission Expires Nov. 29, 1974.

RESPONDENT'S EXHIBIT NO. 8

AFFIDAVIT

STATE OF OHIO
COUNTY OF HAMILTON, SS.

Geoffrey Heitzler, being first duly cautioned and sworn, deposes and states that he and his father alone resided at 2692 Erlene Drive, apt. 721, until his father married Carol Sue Chasteen. Deponent further states that although Miss Chasteen was frequently at the apartment, she did not move in until after her marriage to his father.

Geoffrey Heitzler

Sworn to and subscribed before me this 12th day of October, 1972.

Jacqueline Lee Henthorn
Notary Public
Hamilton County, Ohio

My Commission Expires Nov. 29, 1974.

CERTIFICATE OF SERVICE

The undersigned John B. Carrico, one of counsel for Respondent, hereby certifies that service has been made upon opposing counsel in this case by depositing a copy of the attached Motion to Quash and Dismiss and Motion to Dismiss and Recuse, along with the attached Exhibits in the United States mail, properly addressed to counsel for Relator and the proper United States postage attached, this 16th day of October, 1972.

John B. Carrico
One of Counsel for Respondent